

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

STEVE TYSON,	:	Case No. 3:23-cv-00272
	:	
Plaintiff,	:	District Judge Thomas M. Rose
	:	Magistrate Judge Caroline H. Gentry
vs.	:	
	:	
JUDGE MIA W. SPELLS,	:	
	:	
Defendant.	:	

REPORT AND RECOMMENDATION

On July 12, 2024, the Court ordered Plaintiff to show cause by August 12, 2024 why his claims against Defendant Judge Mia W. Spells should not be dismissed as required by Federal Rule of Civil Procedure 4(m). (Show Cause Order, Doc. No. 8.) For the reasons discussed below, the Court recommends that Plaintiff's claims against Defendant Judge Spells be dismissed without prejudice.

Plaintiff filed his Complaint on September 20, 2023 (Doc. No. 1-2) and paid the required filing fee on February 13, 2024 (Doc. No. 6). The Court subsequently ordered Plaintiff to show cause as to why the claims against Defendant Judge Spells should not be dismissed for failure to effect timely service. (Show Cause Order, Doc. No. 8.) The Court explained in the Show Cause Order that the ninety-day time limit for service specified by Rule 4(m) had passed and that Plaintiff had neither perfected service on Defendant Judge Spells nor sought service from the Clerk of Court. (*Id.* at PageID 41.) The Court stated that pursuant to Rule 4(m), "the court . . . must dismiss the action without prejudice

against that defendant or order that service be made within a specified time.” (*Id.*) The Court also cautioned Plaintiff: “**FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER TO SHOW CAUSE MAY RESULT IN A RECOMMENDATION THAT THE DISTRICT JUDGE DISMISS THIS CASE.**” (*Id.* at PageID 42 (emphasis in original).)

Plaintiff has failed to respond to the Show Cause Order, and the deadline for doing so has passed. Under these circumstances, *sua sponte* dismissal pursuant to Federal Rule of Civil Procedure 4(m) is appropriate. The undersigned therefore **RECOMMENDS** that Plaintiff’s claims against Defendant Judge Spells be dismissed without prejudice.

IT IS SO RECOMMENDED.

s/Caroline H. Gentry

Caroline H. Gentry
United States Magistrate Judge

Procedure on Objections

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendation. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to **SEVENTEEN** days if this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring of record at an oral hearing, the

objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).